



California Fair Political Practices Commission

June 11, 1986

Councilwoman Leta Yancy-Sutton
City of Moorpark
316 Moorpark Avenue
Moorpark, CA 93021

Re: Your Request for Advice
Our File No. A-86-158

Dear Ms. Yancy-Sutton:

This is in response to your April 2, 1986 letter seeking advice on your duties under the Political Reform Act.^{1/} In that letter you indicated that you are a Councilwoman for the City of Moorpark. Your husband is employed as an estimator for a grading contractor in the City. Your husband does not have an investment interest in the grading contractor, receives no commissions or bonuses, and receives compensation on a salary basis only.

QUESTION

You asked if you are prohibited from participating in any zoning, tract map, development plan, general plan amendments or development agreement decisions. You indicated that after a decision is made by the City Council, your husband's employer may submit bids, and may be awarded a grading contract from a developer on a specific project.

CONCLUSION

You may participate in zoning, tract map, development plan or general plan amendment decisions, if, at the time you participate in the decision, there is no reasonably foreseeable material financial effect on your spouse's employer.

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

ANALYSIS

Government Code Section 87100 provides that no public official at any level of State or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on any source of income aggregating \$250 or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made. Section 87103. Your husband's employer is a source of income to you. Section 82030. Accordingly, you may not participate in any decision which has a reasonably foreseeable material financial effect on your husband's employer.

With respect to whether the financial effects of a particular decision are foreseeable, the Commission's Thorner Opinion^{2/} is instrumental. In Thorner, the Commission considered whether a director of a municipal water district, holding an interest in a concrete and building supply business which might be affected by the district's decision on granting variances to a moratorium on new water connections, could participate in those decisions. One of the circumstances which the Commission considered was where the business entity in which the official had a financial interest had no known connection with the project at the time the variance decision was to be made, although it was possible that they might later bid on or supply to the project certain materials. In concluding that there was no reasonably foreseeable material financial effect on the official's financial interest, the Commission noted that the business entity had numerous competitors and that the situation was not one in which there was a "substantial probability" that, because of its unique prior experience the business entity would be chosen to work on the project.

In the present situation, we do not have any information as to the number of businesses competing with your husband's employer or any particular expertise possessed by your husband's employer. You must analyze the factors discussed above in the context of each particular decision to determine

^{2/}Opinion requested by Tom Thorner, 1 FPFC Opinions 198 (No. 75-089, December 4, 1975) (copy enclosed).

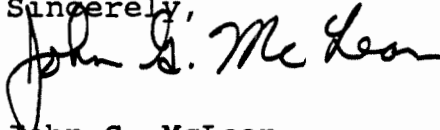
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whether the decisions will have a reasonably foreseeable financial effect on your husband's employer. If you conclude that the decision will have a reasonably foreseeable financial effect on your husband's employer, you must next consider whether that effect will be "material".

Commission Regulation 2 Cal. Adm. Code Section 18702.2 (copy enclosed) provides guidelines for determining whether the effect of a decision on a business entity will be considered "material". Section 18702.2 sets out different tests for materiality depending upon the size of the business entity. If you would like to discuss the application of these guidelines to a particular decision, please let know.

I hope this answers the question you presented. If I can be of further assistance, please feel free to contact me at (916) 322-5901.

Sincerely,

A handwritten signature in dark ink, appearing to read "John G. McLean". The signature is fluid and cursive, with the first name "John" and last name "McLean" clearly distinguishable.

John G. McLean
Counsel
Legal Division

JGM:sm
Enclosures

LETA YANCY-SUTTON
COUNCILWOMAN, CITY OF MOORPARK
316 MOORPARK AVENUE
MOORPARK, CALIFORNIA 93021
(805) 529-2468

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April 2, 1986

Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, Ca. 95814

Dear Sirs:

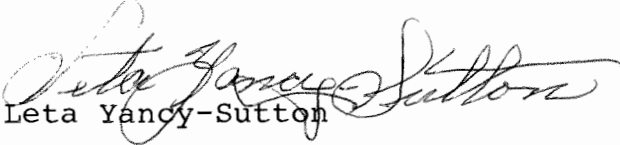
I am requesting your advice on a possible conflict of interest in regards to the salary of my spouse. The details are as follows:

My husband is employed as an estimator for a grading contractor, that may do grading for developers in the City of Moorpark. He has no financial interest in the Company, receives no commissions or bonuses, and is employed on a salary basis only.

My question. May I participate in zoning, tract map, development plan, general plan amendments, and development agreement decisions, etc. If, after the decisions are made by the City Council, the company that employees my husband should bid on, and receive, a grading contract from the developer, would my prior participation be considered a conflict of interest?

Thanking you in advance for your advice on this matter. I will be looking forward to your early reply.

Sincerely,


Leta Yancy-Sutton



California Fair Political Practices Commission

May 13, 1986

Leta Yancy-Sutton
Councilwoman
316 Moorpark Avenue
Moorpark, CA 93021

Re: 86-158

Dear Ms. Yancy-Sutton:

Your letter requesting advice under the Political Reform Act has been received on May 12, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

A handwritten signature in cursive script, reading "Jeanette E. Turvill".

Jeanette E. Turvill
Legal Assistant
Legal Division

JET:plh